

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STRECK, Inc.,)	
)	
Plaintiff/Counterdefendant,)	8:06CV458
)	
vs.)	
)	
RESEARCH & DIAGNOSTIC)	ORDER
SYSTEMS, INC., and TECHNE)	
Corporation,)	
)	
Defendants/Counterclaimants.)	
<hr/>)	

Before the court are 1) defendants/counterclaimants' motion for a stay, or in the alternative, for a protective order staying discovery pending the outcome of an interference proceeding at the United States Patent and Trademark Office, [Filing No. 115](#), and 2) Streck's motion for an expedited hearing on the matter, [Filing No. 131](#). Plaintiff opposes the defendants' motion for a stay. [Filing No. 123](#). This is an action for patent infringement.

This court has twice denied Research & Diagnostic Systems, Inc. and Techne Corporation's (collectively "R&D") motion for a stay. Filing Nos. [38](#) & [51](#). R&D has not presented any evidence that changes the court's position on the stay. To the contrary, Streck has presented evidence of continued alleged infringement that would require injunctive relief that can only be obtained in this court. Streck has also shown that R&D has used the pendency of the motion for a stay to delay or prevent discovery. R&D relies in part on the fact that no trial progression order has been entered in this case to support its position. In opposition, Streck argues that, although a decision on claim construction

has not been issued, there is no reason to delay the progression of this case. The court agrees.

For the reasons stated in this court's earlier order, Filing No. 38, and the reconsideration of that order, Filing No. 51, defendants/counterclaimants' motion for a stay, or alternatively for a protective order, will be denied and the case will be progressed for trial. Streck's motion for an expedited hearing is rendered moot by this decision. Accordingly,

IT IS ORDERED:

1. Defendants/counterclaimants' motion for a stay, or alternatively, for a protective order (Filing No. 115) is denied.

2. Plaintiff/counterdefendant's motion for an expedited hearing (Filing No. 131) is denied as moot.

3. The parties shall have **ten (10) business days** from the date of this order to schedule a planning conference to determine dates for progression of the trial of this action. Counsel for the plaintiff shall contact the chambers of Magistrate Judge Thomas Thalken within such time period to schedule the planning conference.

DATED this 7th day of August, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge